

The House of Representatives' Committee System

The Changing Committee System of the British Parliament

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Introduction

Concerns about the demise of parliament in the UK have been widespread. However, the committee system has increasingly been seen as its potential salvation: a variety of reviews from within parliament and external expert commissions have concluded that the committee system is '...House of Commons at its best'.¹ As a consequence, the House of Commons' select committee system has steadily acquired greater responsibilities and resources. Even further responsibilities are still being mooted. Some of the notable ones are briefly considered here.

The committee system of the British parliament has clear similarities with the House of Representatives. As a fellow bicameral parliament, the UK parliament also has committees in both houses as well as joint committees. The select committee system in the House of Commons is slightly older than the Representatives' standing committee system, having been established in 1979. But it seems that the experience of the Commons' select committee system to some extent informed the House of Representatives' deliberations when considering the introduction of its own committee system.²

1 Liaison Committee, 2000, *Shifting the Balance: Select Committees and the Executive*, First Report of Session 2000-01, HC 300, para. 5. All the House of Commons' reports referred to are available online at www.publications.parliament.uk/pa/select.htm

2 AR Browning, 1987, *Development of the Committee System*, Unpublished House of Representatives Paper

But there are significant differences in the way the committees of the House of Commons operate. The most obvious contrast is that, in the UK, the functions performed by the House of Representatives' standing committees are divided between the select committees and what are now called the public bill committees. The public bill committees consider bills. They come into existence when a bill is referred to them and cease to exist once they have reported. Until 2007, these *ad hoc* committees were confusingly named 'standing committees'. They were simply named after letter of the alphabet. Standing Committee A or B might be sitting throughout the session, but the membership would change once its consideration of a bill had been concluded, with the members replaced by a new set for the next bill. Mercifully, their anomalous name was changed to 'public bill committees', with each one named after the bill it is established to consider. Virtually all bills are considered by a public bill committee following second reading in the House, with bills proceeding from the committee with the amendments incorporated.

The select committee system is organised around the structure of government departments, with each major ministry having a departmental select committee shadowing it: each change in the structure of government departments prompts a corresponding change in the select committees. These departmental select committees are charged with examining the policies, administration and finance of the government department within their jurisdiction. They do not have any role in considering bills; the closest they get to this is their role in pre-legislative scrutiny. In addition to these departmental select committees, there are a few with cross-departmental briefs. Some of these are essentially procedural, such as the Modernisation and the Liaison Committees. Others, such as Regulatory Reform and European Scrutiny, deal with narrow legislative matters. Others, such as Environmental Audit, Public Administration or Public Accounts have a genuinely cross-departmental brief.³

Many of the complaints heard in Australia about the demise of parliament in the face of executive dominance are also commonplace in the UK. And yet in spite of their relatively

³ Unlike Australia, the Public Accounts Committee is a lower house and not joint committee. The Public Administration Committee has increasingly taken on the role as the *de facto* departmental select committee for the Cabinet Office.

limited role, the select committee system has increasingly been seen as perhaps the key vehicle for a revival of parliament. Various changes have been introduced or are currently being discussed designed to enhance this apparent parliamentary renaissance. The public bill committees have been rather less venerated. Seemingly, central to this is that the select committees are unwhipped and their reports usually unanimous. On public bill committees, on the other hand, the party lines are usually drawn fairly firmly with the government generally able to get its legislation through the committee stage as a consequence and the usual complaints about partisanship, adversarialism and executive dominance applied to the proceedings of the Chamber also applied to them. But the change of name from Standing to Public Bill in 2007 was accompanied by some important changes as well.

Background

By the start second term of Tony Blair's government in 2001, considerable attention was being directed towards parliamentary reform, and within that, towards the roles of select committees. The Liaison Committee, the committee comprising the chairs of the departmental select committees and charged with overseeing matters relating to their operation, argued that the select committee system introduced in 1979 had been a success and an example of parliament '...working on the basis of fact, not supposition or prejudice; and with constructive co-operation rather than routine disagreement'.⁴

For the Liaison Committee, the select committees system was so effective because it was able to operate largely independently of government interference and in an atmosphere where the party lines that they suggest dominate proceedings elsewhere in parliament are absent. As a consequence, the select committees were able to work in a constructive rather than adversarial way and the conclusions reached and recommendations made were better as a consequence. This was a theme reiterated by the Hansard Society's Commission on Parliamentary Scrutiny which noted that the select committees '...avoid many of the most sterile and partisan aspects

⁴ Liaison Committee, 2000, *Shifting the Balance: Select Committees and the Executive*, First Report of Session 2000-01, HC 300, para. 5

of parliamentary activity in the chamber and standing committees'.⁵ Such were the benefits, both real and potential, of the select committees that the Commission put the committees at the centre of parliament's operations: 'Parliament should become a more committee-based institution'.⁶ Another extra-parliamentary report, the Power Inquiry, also recommended a significantly enhanced role for select committees along the lines of the powerful US Senate committees.⁷ The Conservative Party endorsed the proposals from the Labour dominated Liaison Committee in the report of an internal party commission chaired by the prominent parliamentary scholar, Lord Norton.⁸ The Modernisation Committee is chaired by the Leader of the House and was established in 1997 to provide ongoing consideration of how the parliament's practice and procedures could be improved. It picked up on many of the proposals of the Liaison Committee and the extra-parliamentary commissions in its report of September 2002.⁹ More recently, a government Green Paper, *The Governance of Britain*, has suggested that select committees should take on a greater role in scrutinising public appointments.¹⁰

Pay for Chairman¹¹

Central in enhancing the role of select committees and enhancing their independence from government influence was the idea that they could provide MPs with fulfilling parliamentary career and be a viable alternative to the pursuit of a position on the front bench. The primary means put forward to achieve this was through providing Committee chairmen with an additional salary. The Liaison Committee, the Norton Commission and the Hansard Society's Commission all recommended that committee chairmen should be additionally remunerated

5 Hansard Society Commission on Parliamentary Scrutiny, 2001, *The Challenge for Parliament*, London: Vacher Dod Publishing, p. 19

6 *Ibid.*, p. 19

7 Power Inquiry, 2006, *Power to the People*, www.makeitanissue.org.uk/resources/

8 Commission to Strengthen Parliament, 2000, *Strengthening Parliament*, London: The Conservative Party, www.conservatives.com/pdf/norton.pdf

9 Modernisation Committee, 2002, *Select Committees*, First Report of Session 2001-02, HC 224-I and II

10 Ministry of Justice, 2007, *The Governance of Britain*, CM 7170, London: The Stationery Office

11 Parliament's Standing Orders still refer to 'committee chairmen' rather than 'chairs'.

for their post. This was a means to enhance the prestige of the post of select committee chairman. And it was also a recognition of the extra time commitment that the position brings, a commitment which one Committee chairman noted might prevent them engaging in lucrative extra-parliamentary work.¹² The decision to introduced payments for chairmen was not universally welcomed, even by existing committee chairmen. It was argued that it might undermine the collegiality of the committee if one member of it were paid more on the basis of their membership. Another concern was that introducing an enhanced salary would bring the posts under closer control of the party whips. Ultimately though, the concerns were not sufficient to prevent their introduction in October 2003.

Select Committees and legislative scrutiny

Almost all bills are automatically referred to a public bill committee after second reading. However, with the main principles of the bill already established, this stage has mostly involved a detailed focus on amending individual clauses. Moreover, the standing committees which performed this task prior to the establishment of the system of public bill committees took no written or oral evidence.¹³ There were complaints that bills were arriving at the Committee Stage 'half-baked': MPs experience of Child Support Act in 1990-91 was apparently a particular spur for the incoming Labour Government to investigate the possibility of greater pre-legislative scrutiny.¹⁴ And of course there were concerns expressed about the quality of the scrutiny performed in their predominantly partisan and adversarial atmosphere.

Both the Modernisation Committee and the Liaison Committee considered this and recommended a significantly greater use of pre-legislative scrutiny. Pre-legislative scrutiny was already used when Labour won office in 1997: draft bills have often been referred to *ad hoc* Joint Committees of the Commons and Lords. However its use had been sporadic and there was a desire to make greater use of it and on a more systematic basis:

12 A lot of backbench MPs have an extensive range of extra-parliamentary positions including as consultants and directors. Disclosure is generally considered sufficient protection from conflict of interest.

13 This is discussed in more detail below.

14 Andrew Kennon, 2004, 'Pre-Legislative Scrutiny of Draft Bills', *Public Law*, Autumn

The scrutiny of bills in draft is a development of great significance. It offers the prospect of properly examined, better thought out and so higher quality legislation. It also makes the legislative process more accessible and inclusive, involving a wide range of interests rather than only “the usual suspects” who are routinely consulted by Governments.¹⁵

Rather than relying on *ad hoc* committees to perform pre-legislative scrutiny, along the lines of the public bill committees, select committees have increasingly taken on the responsibility for scrutinising the draft bills of the departments under their jurisdiction. Government for its part has committed to increasing the proportion of draft bills published and to publish bills in draft bills unless there is a good reason not to do so. Thus far, the number reached a high point of 12 in the 2003-04 session, though the average since 1997-98 has been rather lower: of the 58 draft bills published between the 1997-98 and 2006-07 sessions 45 were subject to pre-legislative scrutiny in a committee.¹⁶ Government has tried to use the process to build consensus in cases where the prospective legislation is particularly contentious or complex.¹⁷ The committees have no power to alter the draft bills, which, as drafts, have no official status. They can only make recommendations for changes that might be incorporated when the full bill is subsequently introduced.

Whilst the process is generally is considered to have been successful, it has not been without problems. The most notable relates to timing of bills: inevitably it seems, government departments produce draft bills later than hoped. With the intention to introduce the full bill in a relatively short space of time, and time needed to incorporate any recommendations the committee may make, the time available for the committee to review the draft bill, receive written submissions, and arrange oral evidence, is often very limited. Deadlines have even

15 The Liaison Committee, 2000, *Independence or Control? The Government's Reply to the Committee's First Report of Session 1999-2000 Shifting the Balance: Select Committees and the Executive*, Second Report of Session 1999-2000, HC 748, para. 58

16 Richard Kelly, Helen Holden and Keith Parry, 2007, *Pre-legislative Scrutiny*, House of Commons Library Standard Note SN/PC/02822, p.7

17 Jennifer Smookler, 2006, 'Making a Difference? The Effectiveness of Pre-Legislative Scrutiny', *Parliamentary Affairs*, Vol. 59(3)

been set by government during parliamentary recess. This type of stampede clearly undermines the usefulness of the exercise.

In spite of this, the general consensus is that the process has delivered tangible benefits in terms of improving the quality of legislation. Interestingly, this has not been limited to changes incorporated when the full bill is introduced. The committee deliberations and reports have informed debate on the full bill and government has been forced to concede on matters that it had originally rejected in its response to the committee's pre-legislative scrutiny. With some of the members of the pre-legislative scrutiny committee serving on the relevant Public Bill Committee, there is also the potential for their greater specialist knowledge to be drawn on.¹⁸ The Government has acknowledged the benefits it has gained from the process: '...the Government believes that, overall, pre-legislative scrutiny has contributed greatly to the quality of legislation'.¹⁹

18 With the Public Bill Committees only temporary and *ad hoc*, specialist knowledge can be limited.

19 Constitution Committee, 2005, *Parliament and the Legislative Process: The Government's Response*, Sixth Report of Session 2004-05, HL 114, para. 10

Public Appointments

In July 2007, one of Gordon Brown's first moves was to restart debate on constitutional reform with the release of a Green Paper, *The Governance of Britain*.²⁰ One of its main proposals was that select committees might conduct confirmatory hearings on significant public appointments. Concerns about the integrity of the appointments process had initially led to the establishment of the Commissioner for Public Appointments, following the Nolan Committee's report on Standards in Public Life,²¹ and the Green Paper's proposals were presented as a development of that. Interestingly, in its response to a report from the Liaison Committee in 2000, the proposal for confirmatory hearings by select committees was strongly rejected by the Government on the grounds that:

- it would break the clear accountability of ministers for appointments;
- risk creating 'lame duck' appointments that had been appointed by the minister but not approved by the committee;
- and contravene select committees' role as scrutiny bodies rather than decision-making bodies.²²

The Green Paper proposed two levels of committee involvement, depending on the post. For most, the relevant committee would convene a hearing with the Ministerial nominee for the post. The Committee's recommendation would not be binding but '...in the light of the report from the committee, Ministers would decide whether to proceed'.²³ For more 'market sensitive' positions such as the Governor of the Bank of England, or the various industry regulators for instance, the hearing would take place after the Minister had made the appointment but before the nominee has actually taken up the post.

20 Ministry of Justice, 2007, *The Governance of Britain*, CM 7170, London: The Stationery Office. It had previously recommended by a number of other bodies including the Commons' Public Administration Select Committee, the Liaison Committee and the Power Inquiry.

21 Commission on Standards in Public Life, 1995, *First Report of the Committee on Standards in Public Life*, Cm 2850-I, London: HMSO

22 Lucinda Maer, 2007, *Parliamentary Involvement in Public Appointments*, House of Commons Library Standard Note SN/PC/4387, p. 5

23 Ministry of Justice, 2007, *The Governance of Britain*, CM 7170, London: The Stationery Office, para. 76

Select committees have already been taking an active interest in significant appointments to bodies within their jurisdiction. Most have held hearings with new appointees soon after they have taken up the post, and the hearings have been less confirmatory and more an exploration of the plans of the new appointee for their organisation. Some, however, have taken a more proactive role. The Treasury Committee is one such. Since the Bank was given operational independence, the Treasury Committee has sought to play a confirmatory role in appointments to the Monetary Policy Committee (MPC) and has taken oral evidence from each new appointee since 1998.²⁴ They have only recommended that one appointee should not take up their post. The Government went ahead with the appointment regardless of the Committee opposition but was forced to publicly state its reasons for doing so.²⁵ The Green Paper's proposals have not, as yet, been acted upon.

Public Bill Committee Evidence

Whilst most of the attention has been focused on the select committee system, the committees considering legislation have also been subject to important change. As noted earlier, scrutiny of bills has until recently been conducted by standing committees which confined themselves to detailed consideration of the bills and the proposed amendments. Dominated by partisan lines with very few successful amendments proposed by backbenchers or by non-government parties accepted. As a consequence, they have been subject to 'an extraordinary level of opprobrium'.²⁶ In its report on *The Legislative Process*, the Modernisation Committee focused on the committee stage of bills, acknowledging that it 'has been one of the most criticised aspects of the legislative process'²⁷

24 The MPC is the body that sets interest rates in the UK. See Lucinda Maer, 2007, *Parliamentary Involvement in Public Appointments*, House of Commons Library Standard Note SN/PC/4387, p. 18.

25 This essentially involved reiterating highlights from the appointee's curriculum vitae.

26 Hansard Society evidence to Modernisation Committee. Modernisation Committee, 2006, *The Legislative Process*, First Report of Session 2005-06, HC 1097, Ev. 108

27 Modernisation Committee, 2006, *The Legislative Process*, First Report of Session 2005-06, HC 1097, para. 50

The solution proposed to address the problems of the standing committee process was to make it more akin to the select committee process by moving to a two-part committee stage. Firstly, the committee would receive written evidence and, where it so chooses, follow this up with oral evidence hearings. Then the committee would proceed to the traditional, 'line by line' scrutiny of the bill. In conjunction with this, the Modernisation Committee also proposed that the term 'standing committee' should be replaced with 'public bill committee'.

In the report and subsequent debate it was suggested that this would bring a number of benefits. Firstly, it would improve the understanding of the members of the committee of the bill by allowing a more deliberative stage with input from relevant (and competing) stakeholders prior to the detailed textual scrutiny. It would also allow a greater engagement with the general public:

...the point of the proposals is to improve the way in which we debate matters and introduce matters in the House, not only for members' convenience and to ensure that the work they undertake in the House is more effective, but to improve the ability of people outside the House to access our legislative process, participate and understand the processes that we go through.²⁸

And, more ambitiously, it was hoped that the evidence stage would actually change the way committees operate. In place of the adversarialism and, ultimately, the executive dominance, of the standing committee system, it was hoped that this evidence-taking stage would create a different culture: 'Evidence-gathering is also, by its nature, a more consensual and collective activity than debate'.²⁹ This is perhaps a contentious claim but the then-Leader of the House, and chair of the Modernisation Committee, modified it a little in debate: 'If consensus cannot be achieved, the process [of evidence taking] will highlight areas of division, which is an important part of the political dynamic'.³⁰

28 Theresa May MP, House of Commons Debate, 1 November 2006, c320

29 Modernisation Committee, 2006, *The Legislative Process*, First Report of Session 2005-06, HC 1097, para. 54

30 Jack Straw MP, House of Commons Debate, 1 November 2006, c307

Unlike the proposals for select committee involvement in scrutinising public appointments for example, the proposals for evidence-taking by legislative committees was introduced swiftly and has been in operation since January 2007, with all public bill committees on programmed bills able to receive written evidence and expected to hold at least one oral evidence session. Initial assessments from members have evidently been positive.³¹ However there is a concern that the time allowed for the committee stage of bills is inadequate. It seems that the consequences in terms of time of the introduction of this evidence-taking stage have yet to be fully appreciated by the parties' business managers. Written evidence needs to be called for and the interested parties need time to compile their submissions. Oral evidence sessions will need to be scheduled and briefings for the committees prepared. Inevitably it will slow the passage of a bill and the lead times are greater.

Resourcing

The resources available for this increased committee activity are also an issue and an area where there have been developments. Like Australia, each select committee has a small staff – typically two clerks, one or two 'committee specialists',³² and a couple of administrative staff. This is supplemented by the research capacity of the parliamentary library. A recent addition to this has been the Scrutiny Unit. Located within the Committee Office, the Scrutiny Unit has contained specialists such as lawyers, economists, statisticians, and estimates experts available for consultation by the select committee staff. Standing committees were, by contrast, staffed by clerks from the Public Bill Office. Their role has been primarily procedural with little in the way of research capacity. But the changes associated with the new public bill committees have inevitably meant a greater demand for support. Thus far, this has been absorbed within the existing arrangements: in addition to the Public Bill office, the Scrutiny Unit has taken on an important role in briefing these committees, and the departmental select committee teams have contributed analysis in areas of their competency.

31 Richard Kelly, 2007, *Modernisation: Public Bill Committees*, House of Commons Library Standard Note SN/PC/04541, p. 8-9

32 External recruits on fixed-term, two to four year contracts. They are tied to a specific committee and will have relevant policy expertise.

Conclusion

The UK's select committee has clearly proved popular with successive reviews – both internal and external – singing its praises. This has led to an increase in the roles it performs, with the potential for still greater tasks being added in the near future. Staff resources have increased accordingly. Standing committees, much criticised in the past, have been reformed on the grounds that should operate more like select committees.

However, whilst they would seem to be a clear success story there are some *caveats* that should be added. The extent to which committees can fulfill these expectations is one. They have certainly operated in a more collegial manner than other elements of the parliamentary process. But ever greater responsibility may put this under strain. Furthermore, it does not follow that increasing their roles will somehow transform the adversarial culture of parliament more generally: if the expectation that it will lead to a sort of deliberative, consensual 'non-politics', it is likely to be frustrated.

But perhaps the most serious constraint on an ever greater role for parliamentary committees is the availability of members themselves. Select committees, often sitting several times a week, are already considered to be running close to the limits of MPs' time. Complaints have also been made that debate in the Chamber has suffered from their other commitments.³³ And these meetings often clash with public bill committees, so members serving on both are frequently 'double-booked'. The exponential rise in constituency work has been blamed.³⁴ One solution would be to increase the staff resources available to the committees but this has been resisted due to fears that they might become too staff driven with inadequate input from the MPs. Moreover, the actual benefits of this in freeing up members time is limited: the committee staffs already provide briefing, organise the receiving of written and oral evidence, arrange any trips required, and draft, edit and publish committee reports: the committee

³³ See Modernisation Committee (2007), *Revitalising the Chamber: The Role of the Backbencher*, First Report of Session 2006-07, HC 337

³⁴ *Ibid.*, para. 16 and Ev 20

members will still have to be present in order for the committee to actually perform their tasks. If parliament is to be radically changed through the committee system, this is clearly something that will need to be addressed first.